

AGREEMENT

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THIS AGREEMENT, Made this 15th day of March , A. D. 1974, by and between THE CITY OF PHILADELPHIA, hereinafter called "City," party of the first part and THE DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY, hereinafter called "DELCORA," party of the second part:

W I T N E S S E T H :

WHEREAS, The City owns and operates the Southwest Wastewater Pollution Control Plant, which has a limited capacity to treat wastewater from DELCORA's Eastern Delaware County Service Area in addition to the wastewater originating within the City;

WHEREAS, Under directives of the Federal government and those of the Delaware River Basin commission and of the Commonwealth, the City is planning to improve, enlarge and operate its plant for its own use and is willing to allocate and reserve in the plant additional capacity to serve DELCORA's Eastern Delaware County Service Area;

WHEREAS, Under like directives, DELCORA is constructing and will operate and maintain the Eastern Delaware County Conveyance System to convey wastewater from its Eastern Delaware County Service Area to the Southwest Plant; and is willing to deliver such wastewater via such conveyance system for treatment and disposal at the City's plant; and

WHEREAS, The facilities which each party proposes to construct, operate and maintain hereunder and the arrangements therefor set forth herein shall be in accordance with:

- (1) the orders, guidelines and regulations of the Delaware River Basin Commission, the Pennsylvania Department of Environmental Resources and the United States Environ-

mental Protection Agency; and

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- (2) the funding arrangements provided in the 1972 amendments to the Water Pollution Control Act which provides for seventy-five percentum (75%) Federal funding and twenty-five percentum (25%) local (City and DELCORA) funding of total capital costs eligible.

NOW, THEREFORE, It is mutually covenanted and agreed by and between the parties hereto:

#### ARTICLE 1

##### Construction, Operation and Maintenance of the Eastern Delaware County Conveyance System and Related Matters

#### 1.01 Design and Construction

In order to collect wastewater from the Eastern Delaware County Service Area, as defined below in Section 9.12, DELCORA, at its own cost and expense, shall design, construct, operate and repair the Eastern Delaware County Conveyance System hereinafter called the "Conveyance System."

Initially, the conveyance system shall include a pumping station in the vicinity of the existing wastewater pollution control plant of the Darby Creek Joint Authority and a force main from such point to the Southwest Wastewater Pollution Control Plant, hereinafter called the "Southwest Plant."

The Conveyance System constructed by DELCORA shall terminate beyond the metering and sampling devices monitoring the flow as provided in Section 1.03 herein at the point of entry into the Southwest Plant.

- (2) with the City's approval (not unreasonably withheld) pay the City the increased costs of any project being constructed by the City resulting from DELCORA's failure to make such relocation.

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DELCORA shall make available to the City at reasonable times and places all information concerning the design and construction of the Conveyance System reasonably requested and the City shall have the right at all reasonable times to inspect construction of said Conveyance System and all records of DELCORA in respect thereof.

#### 1.02 Operation and Maintenance

During the term hereof, DELCORA will at its cost operate, maintain and repair the Conveyance System, or cause it to be maintained and repaired so that at all times it is in efficient operating condition and in compliance with standards prescribed by the appropriate regulatory agencies, except that the City will have the option of maintaining and repairing the portion thereof within the boundaries of the City subject to payment of the costs thereof by DELCORA as provided herein. If, at any time, City forces cannot perform repairs required, the City shall promptly notify DELCORA who will then arrange for such repairs and pay for them directly.

#### 1.03 Metering and Sampling Devices

DELCORA's construction of the Conveyance System shall include at DELCORA's cost metering and sampling devices approved by the City to be installed at the point of entry into Southwest Plant.

The meters shall measure the quantity of wastewater discharged



All design and construction of the Conveyance System within the boundaries of the City shall be in accordance with all City ordinances and regulations governing construction of underground structures and facilities, shall be subject to the City's review and approval prior to implementation (which approval shall not be unreasonably withheld), and shall not interfere with any existing surface or sub-surface structures, except as approved by the City.

For this purpose and insofar as it holds title, City grants to DELCORA right of entry upon the land along the approved route of the Conveyance System for the purpose of construction. Other rights of way or easements required for which City does not hold title shall be acquired at the sole cost of DELCORA, the City assisting in such acquisitions where possible.

The City accordingly, hereby grants DELCORA subject to the conditions herein, authorization to construct, operate and maintain the Conveyance System along the route shown on the plan dated February 28, <sup>1972</sup> made by Albright and Friel filed with the City, an outline of which plan is attached hereto as Exhibit B.

DELCORA agrees that at any time when the space occupied by the Conveyance System within the City's streets shall be required by the City for any public purpose, within six months following notice thereof by the City, DELCORA at its own cost will either

- (1) commence and promptly thereafter complete the relocation of the Conveyance System and restore the surface of streets to their prior condition; or

from the Conveyance System into the Southwest Plant. The sampling devices shall sample the incoming wastewater flow for the purpose of analyses, including measurement of the pounds of BOD and of suspended solids in the flow. The City shall record at least weekly the meter readings of wastewater flowing through the said meters and shall analyze said samples and shall report on the readings and results of its analyses of pounds of BOD and of suspended solids to DELCORA at least quarterly.

The City will own the meters and sampling devices and will inspect, calibrate, maintain and repair such meters and sampling devices as part of its Operating Costs.

The City shall perform the analyses of samples according to standard methods as prescribed in the latest edition of "Standard Methods for the Examination of Water and Wastewater" and the City's findings in such analyses shall be binding on both parties to this Agreement.

DELCORA shall have right of access to the meters and sampling devices for the purpose of reading or otherwise checking them in place at its cost. Prior notice of such intended action shall be required and the City shall have the option of having a representative present during such inspections.

In the case of missing or inaccurate flow records due to faulty meter operation or otherwise, the City shall estimate flow on the basis of the records of past flows as applied to current conditions for use in place of regular meter readings.

ARTICLE 2

Expansion, Operation and Maintenance of  
the Southwest Plant and Related Matters

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2.01 Design and Construction; Reception, Treatment and  
Disposal of Wastewater

The City will plan, design, and construct the expansion of the Southwest Plant and will thereafter operate, maintain and repair such expanded Plant.

The City shall include and reserve in the planning and design of such expansion of the Southwest Plant capacity for the reception, treatment and disposal of fifty million gallons of wastewater per twenty-four hour day (50 m.g.d.) for DELCORA. This waste water shall be delivered via the Conveyance System up to a maximum rate of one hundred fifty-five cubic feet per second (155 c.f.s.) and a total maximum flow of fifty million gallons per twenty-four hour day (50 m.g.d.).

This capacity is reserved herein and will be available on the completion of the expanded plant.

The City shall receive, treat and dispose of the wastewater delivered via the Conveyance System up to the maximum rates allowed.

The City pursuant to the guidelines and with the cooperation of the Delaware River Basin Commission, the Commonwealth's Department of Environmental Resources and the United States' Environmental Protection Agency, will endeavor to complete expansion of the Southwest Plant by December, 1975.

2.02 Operation and Maintenance

During the term hereof, City will operate, maintain and repair its expanded Southwest Plant, its equipment and related facilities so that it will



be in efficient operating condition and in compliance with standards prescribed by the appropriate regulatory agencies.

### 2.03 Metering and Sampling Devices

The City will install metering and sampling devices to measure the total flow into the Southwest Plant except as provided in Section 1.03 and to provide wastewater samples for analyses, including measurement of the pounds of BOD and of suspended solids in the flow. The City shall record meter readings of wastewater flowing into the Southwest Plant from all sources and shall analyse said samples and record the findings of such analyses in the regular course of business.

The City shall perform the analyses of samples according to standard methods as prescribed in the latest edition of "Standard Methods for the Examination of Water and Wastewater" and the City's findings in such analyses shall be binding on both parties to this Agreement.

## ARTICLE 3

### Interim Delivery of Wastewater Via the Conveyance System

#### 3.01 Interim Limits

DELCORA shall begin delivering its wastewater as soon as practicable after the Conveyance System is sufficiently complete to permit such delivery as certified by DELCORA's Consulting Engineers. However, for the period from such beginning date to the completion of the expansion of the Southwest Plant, the wastewater delivered shall not exceed a rate of forty-three cubic feet per second (43 c.f.s.) or a flow fourteen million gallons per twenty-four hour day (14.0 m.g.d.). After termination of the temporary

connection by the Darby Creek Joint Authority (which is covered by an existing agreement) at 75th Street and Grays Avenue, the wastewater delivered shall not exceed a rate of forty-eight cubic feet per second (48 c.f.s.) or a flow of fifteen and one-half million gallons per twenty-four hour day (15.5 m.g.d.).

### 3.02 Temporary Plant Operation

From the date of completion of the Conveyance System until the date of completion of the expansion of Southwest Plant, DELCORA shall continue to operate, or cause to be operated, the existing treatment plant of the Darby Creek Joint Authority to treat all wastewater discharged from the Eastern Delaware County Service Area into the Conveyance System in excess of the interim limits specified above, subject to the orders of the regulatory agencies having jurisdiction over said plant.

## ARTICLE 4

### DELCORA's Capital Contributions

#### 4.01 Components of Capital Contributions

DELCORA shall pay to the City two capital contributions to reimburse the City for the reservation of plant capacity in the expanded Southwest Plant to accept, treat and dispose of fifty million gallons daily from DELCORA's Conveyance System.

Subject to limitations hereinafter provided, DELCORA shall pay to the City

- (1) A capital amount in two payments of DELCORA's proportionate share of the depreciated replacement cost of the existing Southwest Plant which will become part



of the expanded plant and continue in use after completion of the expansion, as determined in Section 4.04; and

- (2) a capital amount in a series of payments of (a) DELCORA's proportionate share of "total project costs" as herein-after defined of planning, design and construction of the expansion of Southwest Plant and of (b) a management fee.

DELCORA shall pay such amounts from a Capital Reimbursement Fund, set up by DELCORA by depositing with its indenture trustee, a bank in Pennsylvania, in irrevocable escrow the capital amounts in (1) and (2) above.

#### 4.02 Capital Amounts Required

(1) On determination of the estimated capital amounts due from DELCORA for those parts of the existing Southwest Plant which will become part of the expanded plant serving DELCORA and continue in use after completion of the expansion, the City shall inform DELCORA of the amounts applicable, DELCORA will then remit the amounts applicable to its indenture trustee for deposit in the Capital Reimbursement Fund for reimbursement to the City, as hereinafter provided.

(2) After determination of DELCORA's estimated capital share of Total Project Costs deducting committed grants, of the expansion of the Southwest Plant as defined hereinafter, and after the date of the receipt of the bids on the first contract for the actual construction of the expansion of the Southwest Plant, on formal requisition by the City itemized within reasonable detail. DELCORA shall pay within thirty (30) days its full share

of the funding of the expansion of the Southwest Plant as then determined to its indenture trustee for deposit in the Capital Reimbursement Fund and payment to the City, as hereinafter provided.

#### 4.03 Capital Reimbursement Fund

The indenture trustee of DELCORA shall deposit the capital amounts to be paid by DELCORA to the City in a separate fund, hereinafter called the Capital Reimbursement Fund, which shall be held and invested by it. To the extent not insured by the Federal Deposit Insurance Corporation or other Federal agency, or invested as hereinafter provided, this Fund shall be continuously secured by the pledge of securities as required by law having an aggregate market value exclusive of accrued interest at all times at least equal to the amount of such moneys. Such moneys may be wholly or partially invested by said trustee only in direct obligations of the United States of America and certificates of deposit which shall mature or shall be subject to redemption at the option of the holder not later than the estimated date when proceeds will be required. Any securities purchased shall be a part of this Fund. The interest and income received from time to time upon investments and any profit realized or loss sustained from the sale of such securities shall be added or charged to the Capital Reimbursement Fund.

#### 4.04 Capital Payments Applicable to Existing Plant Continuing in Use

The cost of the real estate and depreciated replacement costs of the existing facilities at the Southwest Plant which will continue in use after completion of the expansion of the plant will be promptly determined

by an appraiser or appraisers agreed on by both parties. Total appraisals shall be net of any Federal or State grants or reimbursements received.

If this appraisal becomes a "total eligible cost" funded by the Federal or State government, it shall be funded and paid as such. If it does not become such a "total eligible cost," DELCORA and the City shall pay equal shares of the cost.

Upon completion of the expansion of the Southwest Plant, DELCORA's capital share of the costs of the real estate and the depreciated replacement costs as appraised, shall be based on the proportion of plant capacity reserved to DELCORA, 50 million gallons daily (50 m.g.d.), to the total capacity of the expanded plant, two hundred and ten million gallons daily (210 m.g.d.) as currently estimated.

This payment shall be made in two parts as follows:

(a) For the interim period between completion of the Conveyance System and completion of the expansion of the Southwest Plant, DELCORA shall pay a share based on the proportion of DELCORA's interim reserved capacity of fifteen and a half million gallons daily (15.5 m.g.d.) to the present design capacity of the Southwest Plant of one hundred thirty-six millions gallons a day (136 m.g.d.). This payment shall be due and payable within ninety (90) days of the date that wastewater is first delivered through the Conveyance System.

(b) Upon completion of the expansion of the Southwest Plant, DELCORA shall pay the difference between the amount based on the proportion of the new capacity reserved to DELCORA to the total capacity of the expanded



Southwest Plant as finally designed, and the amount previously paid under (a) above.

4.05 Capital Payments Applicable to Expansion of Southwest Plant

Payments from the Capital Reimbursement Fund shall be made only upon requisition by the City upon the trustee. The City will pay its contractors in full in proper form accompanied by certificates of the City's engineers. As the City vouchers such payments, it will requisition DELCORA's trustee for DELCORA's share of the expenditure. From time to time, the City shall also requisition the trustee for reimbursement of DELCORA's share of other expenses, detailing such expenses as part of the requisition.

The City shall requisition for reimbursement only that part of construction costs paid or due and payable at the time of requisition.

Requisitions will be due and payable in ten (10) calendar days. Copies of bills as paid by the City and requisitions issued thereon shall be sent to DELCORA.

The amount of each reimbursement shall be fixed in the same proportion as DELCORA's proportionate share of the "total projects costs" as hereinafter defined.

4.06 Total Project Costs

"Total Project Costs" for the purpose of reimbursement shall initially consist of the capital estimates by the City's consulting engineers of the costs of planning, designing and constructing the total expansion of the Southwest Plant. Such estimates will take into account:

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- (a) All engineering costs and the costs of the appraisal referred to in Section 4.04 of surveys, estimates, plans and specifications, and for supervising construction as well as for the performance of all other duties of such engineers required by or consequent upon the proper performance of any such construction;
- (b) the costs of acquiring by purchase, or by condemnation such lands, property rights, rights of way, franchises and other interest in land and such personal property as may be deemed necessary or convenient in connection with such project;
- (c) obligations incurred for labor and to contractors, builders and materialmen in connection with construction;
- (d) the cost of contract bonds and insurance of all kinds which may be required or necessary during the course of any such construction and which are not paid by the contractor or contractors or otherwise provided for; and
- (e) any sums required to reimburse the City for advances made for any of the above items, and for work done by it which is properly chargeable to such construction.

There shall be deducted from these capital costs at appropriate times the grants received from the Commonwealth of Pennsylvania or the United States of America or agencies of either that are applicable to the said costs as defined herein or other costs found applicable to the project.

The net "total project costs" shall be apportioned between the City and DELCORA in the proportion of the Southwest Plant capacity reserved to DELCORA to the total designed capacity of the Southwest Plant.

The City shall apply the resulting percentage to the City's vouchered payments in its requisitions to DELCORA's trustee for reimbursement.

#### 4.07 Change in Project Costs and Reimbursement

In the event, after the receipt of construction bids for each part of the construction of the expansion, the estimated "total project costs" of the project is increased, whether upon receipt of construction bids for subsequent work or otherwise (except by reason of adding facilities or enlarged capacity for the City's use), the City shall deliver an itemized revision of said project cost to DELCORA and any supporting material reasonably requested by DELCORA. Within one hundred and twenty (120) days thereafter DELCORA will pay to its trustee for deposit in the Capital Reimbursement Fund its proportionate share of such increase (based upon the method of computation specified above).

Changes in Project Costs shall not be revised more often than once every twelve months.

#### 4.08 Payment of Management Fee

Besides payments made in reimbursement of its proportionate share of "total project costs," DELCORA shall pay to the City a management fee of one hundred and fifty thousand (150,000) dollars. The City shall requisition

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DELCORA's trustee for this fee when the City's engineers report the expansion of the Southwest Plant seventy-five percent (75%) complete.

If this fee becomes a "total eligible cost" funded by the Federal or State government, DELCORA shall pay that portion of the fee not funded by the Federal or State government.

#### 4.09 Audit of Project Cost

The said certificate of the City's engineers as to actual "total project costs" and the records from which it is compiled shall be audited within six months after completion of construction by a certified public accountant selected by the City and approved by DELCORA (approval not to be unreasonably withheld) and the expense of such audit shall constitute part of such project cost. A Federal audit may satisfy this requirement, such determination being made by DELCORA in advance of actual audit.

#### 4.10 Final Adjustment of Capital Payments

Upon completion of construction of the expansion of the Southwest Plant the City will deliver to DELCORA a certificate of its engineers stating (a) the fact of such completion and (b) in reasonably itemized form, the actual total project costs of said construction, after deducting the amount of any applicable Federal or State grants paid or payable against such costs.

If DELCORA's share of the actual net "total project cost" is less than the total amount paid by it as required by this Agreement, the excess of such payments shall forthwith be refunded by the City to DELCORA's trustee within one hundred and twenty (120) days after receipt of said certificate